



**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CARLOS NOGUERA,

Petitioner,

vs.

GREG SMITH, *et al.*,

Respondents.

3:11-cv-00428-LRH-WGC

ORDER

This action proceeds on a habeas corpus petition pursuant to 28 U.S.C. § 2254 brought pro se by petitioner, Carlos Noguera. Before the Court is petitioner's motion for "relief from the judgment" seeking reconsideration of the Court's denial of counsel (ECF No. 9). This motion shall be denied. Also pending is an unopposed motion to dismiss the petition (ECF No. 11) on the grounds that it contains unexhausted claims.

Despite being given notice through the Court's Order regarding the requirements of *Klinge v. Eikenberry* and *Rand v. Rowland*, (ECF No. 12), petitioner has not opposed the motion and has not sought additional time from the Court to do so. Local Rules of Practice (LR) Rule 7-2(d) provides that ... "the failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion."

Because, pursuant to 28 U.S.C. § 2254(b)(1), the Court is unable to entertain the merits of claims raised in this Court but not raised before the state court's, the motion to dismiss must be granted.

1 In order to proceed with an appeal from this court, petitioner must receive a certificate
 2 of appealability. 28 U.S.C. § 2253(c)(1). Generally, a petitioner must make “a substantial showing of
 3 the denial of a constitutional right” to warrant a certificate of appealability. *Id.* The Supreme Court has
 4 held that a petitioner “must demonstrate that reasonable jurists would find the district court’s assessment
 5 of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

6 The Supreme Court further illuminated the standard for issuance of a certificate of
 7 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The Court stated in that case:

8 We do not require petitioner to prove, before the issuance of a COA, that
 9 some jurists would grant the petition for habeas corpus. Indeed, a claim
 10 can be debatable even though every jurist of reason might agree, after the
 11 COA has been granted and the case has received full consideration, that
 12 petitioner will not prevail. As we stated in *Slack*, “[w]here a district court
 has rejected the constitutional claims on the merits, the showing required
 to satisfy § 2253(c) is straightforward: The petitioner must demonstrate
 that reasonable jurists would find the district court’s assessment of the
 constitutional claims debatable or wrong.”

13 *Id.* at 1040 (quoting *Slack*, 529 U.S. at 484).

14 The Court has considered the issues raised by petitioner, with respect to whether they
 15 satisfy the standard for issuance of a certificate of appeal, and the Court determines that none meet that
 16 standard. Accordingly, the Court will deny petitioner a certificate of appealability.

17 **IT IS THEREFORE ORDERED** that the motion for relief from judgment (ECF No.
 18 9) is **DENIED**.

19 **IT IS FURTHER ORDERED** that the Motion to Dismiss the Petition (ECF No. 11) is
 20 **GRANTED**. The petition is **DISMISSED**. No Certificate of Appealability shall issue. The Clerk shall
 21 enter judgment accordingly.

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 23 Dated this 13 day of December, 2011.

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 25 UNITED STATES DISTRICT JUDGE
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